STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 8, 2010
v	No. 288218 Ingham Circuit Court
DONTRELL MAURICE CROSBY, Defendant-Appellant.	LC No. 07-000483-FC

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, JJ.

MEMORANDUM.

Following a jury trial, defendant appeals as of right from his convictions of assault with intent to murder, MCL 750.83, and possession of a firearm during commission of a felony (felony-firearm), MCL 750.227b. The jury was unable to reach a verdict on a charge of first-degree premeditated murder, MCL 750.316(1)(a). The trial court sentenced defendant to 210 months to 540 months in prison on the assault count, to be served consecutively to a two-year term on the felony-firearm count. We affirm.

Defendant was prosecuted for his involvement in a drive-by shooting, in which an 18-month-old child was killed and the child's father was injured. Defendant's convictions arose out of the shooting of the father. The first-degree murder charge stemmed from the death of the 18-month-old. The evidence at trial was that the father was holding the child when both were struck by gunfire.

Defendant first claims that the trial evidence was insufficient to identify him as the gunman in the assault against the father. We review this sufficiency claim de novo, to determine whether a rational trier of fact could have found that the prosecutor established that defendant was the gunman. *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990). We conclude that the evidence was sufficient as to defendant's identity as the gunman. The prosecutor presented evidence that defendant had been seen with a large-caliber gun shortly before and after the shooting, that defendant had threatened a relative of the father, that defendant admitted shooting a gun into the air at the scene of the offense, and that the father identified defendant as his assailant. Although defense counsel challenged the credibility and accuracy of this evidence, we decline to second-guess the jury's determinations as to credibility, particularly in light of the requirement that we view the evidence in the light most favorable to the prosecution. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Defendant also claims that his sentences constitute cruel and/or unusual punishment under the federal and state constitutions. US Const, Am VIII; Const 1963, art 1, § 16. We review this unpreserved claim for plain error. *People v McLaughlin*, 258 Mich App 635, 670; 672 NW2d 860 (2003). We find no plain error, given that defendant's sentences are within the range prescribed in the sentencing guidelines. MCL 777.62. As we have previously explained, "a sentence that is proportionate is not cruel or unusual punishment." *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). Where, as here, an offender's sentence is within the guidelines range, the sentence is presumptively proportionate. *Id*., citing *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has presented nothing to support his contention that the trial evidence, his age, or his prior record warranted special consideration beyond that of the sentencing guidelines.

Affirmed.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens